No. 02-1019

MAR 7 2003

IN THE
SUPREME COURT OF THE UNITED STATES
- October Term, 2002

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

When the police first initiate contact with a defendant after the defendant no longer controls or occupies his vehicle, and the defendant is subsequently arrested, does the U.S. Supreme Court's holding in *New York v. Belton* apply, allowing a full search of the vehicle incident to arrest, or is the search limited by the U.S. Supreme Court's holding *in Chimel v. California*, allowing only a search of the defendant himself and his immediate area?

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OPINION BELOW

The Arizona State Court of Appeals' opinion that is the subject of the present Petition for Writ of Certiorari is reported as *State v. Gant*, 202 Ariz. 240, 43 P.2d 188 (Ariz.App. 2002). The order of the Arizona Supreme Court denying review of *State v. Gant* is not reported, yet is attached as Appendix B of the Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

Division Two of the Arizona Court of Appeals entered the judgment from which relief is sought on March 29, 2002. *State v. Gant*, 202 Ariz. 240, 43 P.2d 188 (Ariz.App. 2002). The Arizona Supreme Court thereafter issued its order denying review without comment on September 26, 2002. *See* Appendix B of Petition for Writ of Certiorari.

Respondent agrees that: 1) Petitioner timely filed their Petition for Writ of Certiorari within ninety days of the order denying review; 2) the lower court decision in issue presents both a question of federal constitutional law and a live case or controversy; and 3) Petitioner has exhausted its remedies at the state level. However, Respondent respectfully submits that the United States Supreme Court should deny the Petition for Writ of Certiorari in this matter because: 1) the Arizona Court of Appeals did not err in its decision; and 2) there is insufficient conflict among the federal circuits and state courts to warrant or justify review.

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourth Amendment is applicable to all states through the Fourteenth Amendment to the United States Constitution, which provides in relevant part:

"Section 1. No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Arizona courts, together with many other federal and state jurisdictions, have properly applied the United States Supreme Court's holdings in *New York v. Belton*, 453 U.S. 454 (1981), and *California v. Chimel*, 395 U.S. 752 (1969), by upholding the historical rationales underlying the "search incident to arrest" exception to the warrant requirement originally fully set forth by Chief Justice Rehnquist in *United States v. Robinson*, 414 U.S. 218 (1973), and recently confirmed in *Knowles v. Iowa*, 525 U.S. 120 (1998): (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. In properly interpreting the "recent occupant" language of the *Chimel/Belton* bright line rule allowing searches of automobiles following a custodial arrest to require police to have initiated contact while a defendant was the "occupant" of the vehicle to be searched, these courts have properly applied consistent United States Supreme Court authority in the area of search and seizure and safeguarded both the Fourth Amendment warrant requirement for searches, as well as the integrity of the historical rationales of the "search incident to arrest" exception to the 4th Amendment warrant requirement. To extend the present bright-line rule to include searches of all automobiles "occupied" prior to any police contact would ignore consistent Supreme Court precedent, substantially abrogate the Fourth Amendment itself as applied to automobiles in general and disregard both the historical rationales for the "search incident to arrest" exception and make obsolete or unnecessary the independent probable cause related "automobile exception" to the warrant requirement enunciated in *Chambers v. Maroney*, 399 U.S. 42 (1970).

A. MATERIAL FACTS.

Respondent presents the following facts from the stipulated appellate record controverting the State's factual background at page 4 of their Petition for Writ of Certiorari.

Investigating officers had come to the same residential location where Respondent's arrest took place earlier the same day after receiving a report of possible narcotics activity. *Gant*, 43 P3d, at 190, Para. 3. At that time, the officers first had contact with Respondent Rodney J. Gant when he answered the door of the house. *Id.* During the first contact with Respondent, not later, the investigating officers discovered that he had a suspended driver's license and an outstanding warrant for a misdemeanor Failure to Appear, yet did not arrest him. *Id.*

Later that evening, after the investigating officers had returned to the residence in an attempt to contact the resident of the house, Respondent drove up to the residence and parked his vehicle in the driveway. *Id.* Respondent did not start walking toward the officer after getting out of his car, yet began walking toward the back door of the house when he was called over by the investigating officer who had identified Respondent as the individual he had previously met at the residence. *Id.* The officer then arrested Respondent for Driving on a Suspended License and the misdemeanor warrant, secured him in the back seat of his patrol vehicle, searched his vehicle, and discovered drug related contraband (a weapon and cocaine) providing the basis for felony drug charges. *Id.* at p. 188, Para. 1; p. 190, Para 3.

B. PROCEEDINGS BELOW

Respondent appealed the trial court's denial of his motion to suppress the contraband after the lower court held that the search of his vehicle was reasonable as a search incident to his arrest. *Id.* at p. 191, Para. 5. The Arizona Court of Appeals reversed, holding that the search of Respondent's vehicle was illegal because *Chimel* rather than *Belton* applied to the subject "search incident to arrest" because Respondent had "voluntarily—that is, not in response to police [contact or] direction—stopped his vehicle, got out, exited it and began to walk away from it." *Id.* at p. 193, Para. 9. The Appellate Court further held that historical rationales underlying the *Belton* bright line rule allowing an automobile "search incident to arrest" did not apply to the stipulated facts of the present case, and that under such facts, the search incident to arrest rule enunciated in *Chimel* applied. *Id.* at pp. 192-94, Para. 8-11. The Appellate Court finally concluded that the search could not be justified under the automobile exception to the warrant requirement because no probable cause existed for a search related to drug activity. *Id.* at p. 196, Para. 16.

Thereafter, Petitioner sought review by the Arizona Supreme Court arguing that this most honored Court had held in *New York v. Belton* that police officers may, *carte blanche*, search the vehicles of all criminal defendants recently occupied thereby, whether said defendants had voluntarily left their vehicle prior to police contact or had departed their vehicle either following police contact or at police direction. The Arizona Supreme Court subsequently denied review without comment, implicitly affirming the decision of the Arizona Court of Appeals. (Petition for Writ of Certiorari, Appendix B)

REASONS TO DENY THE PETITION

A. SUMMARY OF THE ARGUMENT.

Under the United States Supreme Court's holding in *New York v. Belton*, before a search incident to arrest of a defendant's vehicle may be conducted, the defendant must have occupied or controlled the vehicle in issue at the time law enforcement initiated contact. The Arizona Court of Appeals properly held in *State v. Gant* that a *Belton* "search incident to arrest" was inapplicable in situations involving defendants who are arrested after *voluntarily* departing their vehicles prior to any police contact. In doing so, the Arizona courts, together with many other federal and state jurisdictions, have properly applied the holdings in *New York v. Belton*, 453 U.S. 454 (1981), and *Chimel v. California*, 395 U.S. 752 (1969), by upholding the two historical rationales underlying the "search incident to arrest" exception to the warrant requirement originally fully set forth by Chief Justice Rehnquist in *United States v. Robinson*, 414 U.S. 218, 223-36 (1973), and recently confirmed by the Chief Justice in *Knowles v. Iowa*, 525 U.S. 113, 116-119 (1998): (1) the need to disarm the suspect in order to take him into custody and prevent his escape, and (2) the need to locate and preserve evidence for later use at trial regarding the underlying crime. In properly interpreting the "recent occupant" language of the *Belton* bright-line rule allowing searches of automobiles following a custodial arrest to require police to have initiated contact with the arrestee while occupying or controlling the vehicle to be searched, these courts have properly applied consistent United States Supreme Court authority in the area of search & seizure law and safeguarded both the Fourth Amendment warrant requirement for searches, as well as the

integrity of the historical rationales of the "search incident to arrest" exception to the warrant requirement repeatedly enunciated by this most honored Court.

Should this great Court grant review in this case, it should affirm the *Gant* decision and not extend the present *Chimel/Belton* bright-line rule to include searches of *all* automobiles "occupied" prior to *any* police contact. Such a holding would ignore consistent Supreme Court precedent, substantially abrogate Fourth Amendment protections related to automobiles in general, and disregard both the historical rationales for the "search incident to arrest" exception itself and the ongoing viability of the independent "automobile exception" to the warrant requirement.

B. ARGUMENT: NOTWITHSTANDING ARGUABLE CONFLICTS AMONG FEDERAL AND STATE COURTS ON THE SUBJECT, THE *GANT* COURT DID NOT ERR BECAUSE IT PROPERLY APPLIED U.S. SUPREME COURT PRECEDENT REGARDING THE "SEARCH INCIDENT TO ARREST" EXCEPTION TO THE 4TH AMENDMENT WARRANT REQUIREMENT.

In *New York v. Belton* the United State Supreme Court applied the *Chimel* "search incident to arrest" exception to the 4th Amendment warrant requirement to custodial arrests of "occupants" of automobiles. *Ibid.*, 453 U.S. 454, 460 (1981). It is both the fact of a lawful arrest, as well as the existing concerns for both officer safety and the preservation of evidence which triggers this exception to the 4th Amendment warrant requirement. *Chimel,* 395 U.S. 752, 763 (1969), *Robinson*, 414 U.S. 218, 235 (1973), and *Knowles v. Iowa*, 525 U.S. 113, 116-119 . Although *Robinson* established a bright-line rule for "searches incident to arrest" and *Belton* extended the same rule to arrests of "occupants" of automobiles, *Belton* did not abrogate 4th Amendment protections, if an automobile is somehow merely spatially or temporally connected with the arrest, nor did

it allow, *carte blanche*, a search of such automobiles when not actually occupied or controlled by the arrestee at the time of initial police contact.

In *Gant*, the Arizona Court of Appeals properly applied the "occupancy" requirement of *Belton* in light of other United States Supreme Court precedent in *Chimel*, *Robinson* and *Knowles*, holding that given the limiting language of *Belton* itself, and the historical rationales of safety and preservation of evidence underlying the "search incident to arrest" exception, that it was improper to extend the *Belton* bright-line rule to situations in which the occupant of a vehicle who is subsequently arrested has voluntarily left the vehicle prior to actual police contact or contact being initiated. In holding that *Belton* does not apply when police initiate contact *after* a defendant has voluntarily exited their vehicle, the appellate court properly applied existing and current United States Supreme Court precedent which continue to stress the importance of the historical rationales of officer safety and preservation of evidence and their foundational relationship with the "search incident to arrest" exception. In doing so, the *Gant* court kept the *Chimel/Belton* "search incident to arrest" exception from being improperly extended to "spatio-temporal situations" that would merely muddle "bright-line" waters of present law as applied to searches and seizures, creating additional and unnecessary litigation to ferret out when such a "spatio-temporal" rule may or may not be applied.

1. THE ARIZONA COURT OF APPEALS CORRECTLY APPLIED UNITED STATES SUPREME COURT PRECEDENT IN *WASHINGTON*, *CHIMEL*, *BELTON* AND *KNOWLES*.

The seminal case dealing with a search incident to arrest was *Chimel v. California*. In *Chimel*, the United States Supreme Court established the rule that a warrant is not necessary to conduct a search of an arrested individual including the "grab

area" from which an arrestee might gain possession of a weapon or destructible evidence, so long as it occurs relatively contemporaneously to the arrest. *Id.*, 395 U.S. 752, 762-63, 89 S.Ct. 2034, 2039-2040 (1969). Thereafter, in *United States v. Robinson*, the Supreme Court established the "search incident to arrest" exception as a "bright-line" rule and greatly explained the historical rationales underlying the exception to the warrant requirement, stating that they were two-fold: 1) officer safety and 2) preservation of evidence. *Id.*, 414 U.S. 218, 224-35, *Knowles* at 117. In discussing the historical development of the exception itself, the Supreme Court plainly reaffirmed and restated its holding in *Chimel* in stating:

> "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter may use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. *Robinson*, 414 U.S. at 226 citing *Chimel*, at 149.

The particular rule with respect to the search of vehicles incident to arrest was set out in *N.Y. v. Belton*, 453 U.S. 454, 101 S.Ct. 2860 (1981), in which the U.S. Supreme Court extended the *Chimel* search incident to arrest to automobile scenarios in which the arrestee is the "occupant" or "recent occupant" of an automobile following a traffic stop concluding that the passenger compartment of the vehicle was the "grab area" defined previously by the Supreme Court in *Chimel*. *Ibid.* at 460. Moreover, in *Belton* the Supreme Court stated:

> "Our holding today does no more than determine the meaning of *Chimel*'s principles in this particular and problematic content. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrest." *Belton.* at 460, n. 3.

The Supreme Court thereafter stated that under prevailing fundamental principles of constitutional search and seizure, in order for a search incident to arrest to be reasonable as opposed to merely exploratory, it must be grounded in at least one of the rationales for which the exception was created: officer safety or the preservation of evidence. *Id.* at 460, *Chimel*, 395 U.S. at 768.

In recent years, the Supreme Court has reaffirmed the historical rationales of officer safety and preservation of evidence as providing the basis for the exception itself in refusing to extend the *Belton* search incident to arrest exception to traffic citation cases where, although police make contact with an individual while occupying their vehicle, no actual custodial arrest takes place and the dual concerns for officer safety and preservation of evidence are either lessened by the circumstances of the police stop/detention or totally inapplicable. *Knowles v. Iowa*, 525 U.S. 113, 114-117 (Rationale of officer safety and preservation is greatly lessened in traffic citation detention as compared to custodial arrest situation, while preservation of evidence rationale is non-existent because proof of traffic violation already established without need of further evidence from vehicle search).

In the present case, the search of Respondent's vehicle was obviously exploratory in nature, intended to circumvent the need for a search warrant, and was not reasonable because it was not grounded in at least one of the rationales for which the exception was created: officer safety or the preservation of evidence. *Belton.* at 460, *Chimel* at 768, and *Knowles* at 114-17.

At the time the initial police contact, Respondent had already departed from his vehicle and was walking away from it. He immediately walked towards the investigating

officer when called and was arrested. Under circumstances that included defendant voluntarily departing his vehicle prior to police contact, walking even further away from the vehicle to his own arrest and being secured in the back of a police car at the time of the actual search, the officer safety rationale required could not reasonably have existed.

Further, here, just as in *Knowles*, the destruction of evidence rationale did not exist, because the proof of Respondent's driving on a suspended license and/or failure to appear had been previously established by the police earlier in the day and with Respondent driving of the vehicle. The police were not looking for a specific vehicle related to suspected drug activity, yet obviously wanted the opportunity to search Respondent's vehicle without satisfying the 4th Amendment warrant requirement. Additional evidence could not and was not yielded from the search of the incidental vehicle supporting the initial arrest charges. Therefore, since neither rationale existed in the *Gant* case, the search in issue was unreasonable and violative of the 4th Amendment. *Belton.* at 460, *Chimel* at 768, and *Knowles* at 114-17.

Based upon the foregoing, the *Gant* decision should be affirmed.

2. CONFLICTING OPINIONS AMONG THE FEDERAL CIRCUITS AND STATE COURTS ARE GENERALLY DISTINGUISHABLE ON THEIR OWN FACTS OR WRONGLY DECIDED UNDER *BELTON* AND APPLICABLE SUPREME COURT PRECEDENT. IN CONTRAST, THE *GANT* OPINION IS FIRMLY GROUNDED IN APPLICABLE LAW, UNLIKE PETITIONER'S "SPATIO-TEMPORAL" TEST.

Petitioner suggests that there is a great conflict among both federal and state courts regarding the application of the *Belton* rule in cases similar to the facts of this case. However, these cases[1] are either generally distinguishable on their own facts, or they

conflict in their interpretation of the *Belton* required "occupant" status necessary for a automobile related "search incident to arrest". Although the State alleges that the Arizona Court of Appeals in *Gant* relied heavily upon the *Hudgins* case, in actuality the lower appellate court relied particularly upon U.S. Supreme Court precedent in *Chimel & Belton*. However, Petitioner's proposed "spatio-temporal" bright-line rule is not grounded in applicable law.

a. Conflicting Opinions Among Federal Circuit and State Courts

Conflicting opinions among federal circuit and state courts distinguishable on their own facts or improperly apply the *Chimel/Belton* bright-line rule.

Among the federal circuits, both the 6th Circuit Court of Appeals and the D.C. Circuit Court of Appeals have properly interpreted the *Chimel/Belton* bright-line rule as requiring actual occupancy or control of the vehicle to be searched at the time police actually initiate contact in keeping with the historical rationales of officer safety and evidence preservation. *U.S. v. Strahan*, 984 F.3d 155, 159 (6th Cir. 1993), *U.S. V. Hudgins*, 52 F.3d 115, 118-120 (6thCir. 1995), *U.S. v. Fafowora*, 865 F2d 360, 362 (D.C.Cir. 1989). Such an interpretation is true to both the limiting language of *Belton* itself, as well as to the historical rationales for the rule as outlined and confirmed by the U.S. Supreme Court in *Robinson* and *Knowles*: officer safety and preservation of evidence. *Supra*.

On the other hand, the cases favorably cited by the Petitioner as the basis for expanding the *Chimel/Belton* bright-line rule may be distinguished both factually or in their misapplication of present law.

For example, in *Snook*, the 8th Circuit confirmed the legality of the search of that defendant's vehicle under *Belton's* "recent occupant" language under circumstances that included the following facts: 1) that at the time of the arrest, the vehicles' engine was still running, 2) the arresting officer found the contraband in plain view when he reached in to the vehicle to turn it off and 3) the defendant was arrested next to his running vehicle. *Id.*, 88 F.3d 605, 606-08 (8th Cir. 1994). Also, in *Franco*, the 10th Circuit similarly confirmed the validity of the search of the Franco vehicle under *Belton's* "recent occupant" language because the defendant in that case was traveling back and forth between his own car and the adjacent undercover police vehicle at the time of his arrest. *Id.*, 981 F2d 470, 472 (10th Cir. 1992). *U.S. v. Arango* involved a defendant who, after being *contacted* by police, immediately fled his vehicle and was arrested a block away from the vehicle. *Id.*, 879 F.2d 1501, 1506-07 (10th Cir. 1985).

Other cases cited by Petitioner either espousing a "spatio-temporal" or "positive" association with the vehicle searched are not true to the historical rationale underlying the "search incident to arrest" rule and push the once clear bright-line "occupancy" rule to the breaking point, where the historical rational underlying the exception itself are not even considered in an apparent effort to validate an illegal vehicle search.

b. The *Gant* Decision was Based Upon the Proper Definition of "Recent Occupancy" in Light of U.S. Supreme Court Precedent and Cases Properly Applying Both *Belton* and the Required Historical Rationale in Their Analysis.

Petitioner incorrectly claims that the Arizona Court of Appeals decision in *Gant* has created a test for occupancy that turns on an arrestee's state of mind. (Petition for Certiorari at p. 13-15.) However, the *Gant* opinion is based upon a simple test first

established by this most revered Court in *Belton*: Was the defendant inside the vehicle at the time of the initial contact or detention by police? *Id.* at 460. Further, this simple test was principally based upon the *Gant* court's analysis of existing U.S. Supreme Court precedent in both *Chimel* and *Belton*, as well as a detailed analysis of federal circuit cases that have properly considered the historical rationales of officer safety and preservation of evidence in their decisions. *Gant*, 43 P.2d at 191-93, Paras. 4-11. In sharp contrast, both the federal and state cases that Petitioner relies on or cited supporting its position have either improperly expanded the "recent occupant" requirement of *Belton* or abandoned the underlying historical rationales for the "search incident to arrest" and the "grab area" corollary altogether. Such an expansion or abandonment is in direct contravention of U.S. Supreme Court authority in *Chimel*, *Robinson*, *Belton* and *Knowles*.

c. A Spatio-Temporal Expansion of the *Chimel/Belton* Bright-line Rule Would Ignore the Foundational Rationale Upon Which the Rule is Based and Create Problems in Both Interpretation and Application.

Petitioner requests that this most respected Court resolve the conflict between those federal and state courts strictly interpreting the "recent occupant" requirement of *Belton* and those courts broadly interpreting the term by adopting a "bright-line spatio-temporal test". (Petition for Certiorari at pp. 13-17.) This test that would abandon the "grab area" enunciated in both *Chimel* and *Belton*, which was properly tied to the historical rationales of officer safety and evidence preservation, and allow searches of all automobiles that: 1) are either in some undefined proximity to the defendant at the time of his arrest or 2) were occupied, yet departed by the defendant prior to police even initiating contact. Such a test would obviously abandon the historical rationale of officer

safety and evidence preservation and "give law enforcement officials the opportunity to engage in searches not justified by probable cause, by the simple expedient of arranging to arrest suspects near their [vehicle], rather than elsewhere. *Chimel* at 767. Obviously, if probable cause exists to search a vehicle, a valid search under the "automobile exception" could be performed. *Chambers v. Maroney*, 399 U.S. 42 (1970).

Further, such an expansion would controvert the facts and legal principles of *Chimel*, in which the United States Supreme Court held that the search of that defendant's three room house, workshop, attic and garage (which area was in close physical and temporal proximity to his arrest in one room of the house) was unreasonable because it was "far beyond the...area from within which he might have obtained either a weapon or something that could have been used as evidence against him". *Id.* at 754, 764-68. Here, the proposed "spatio-temporal" test would do the same and make the "automobile exception" unnecessary or obsolete, fatally compromising the tenets of 4th Amendment itself.

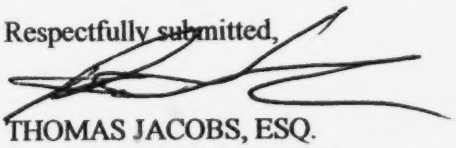
Finally, adopting the "spatio-temporal" bright-line rule proposed by Petitioner would have adverse effects on the judicial system and precious judicial resources. Although law enforcement may greatly benefit from being able to "search at will" any vehicle somehow related to a particular defendant, the cost would be the abrogation of fundamental constitutional rights. Moreover, the judicial system would bear the burden of additional evidentiary hearings generated by such a rule to determine whether the "spatio-temporal" rule applies in a given case. For example, just how close in space or time would a particular defendant have to be to allow or disallow the search of a defendant's vehicle? On the other hand, the present *Belton* rule is simple and easy to

administer. If a defendant "occupies" a vehicle at the time police initiate contact, the vehicle compartment may be searched incident to arrest. If a defendant has departed the vehicle prior to such contact, the defendant himself may be searched under *Chimel*, as well as the "grab area" at which such an arrest takes place. If probable cause exists to believe that the vehicle contained contraband, the "automobile exception" would apply and a subsequent search would be legal, protecting the interests of law enforcement.

CONCLUSION

Based upon the foregoing facts, authorities and legal arguments, Respondent respectfully requests that this most honored Court deny the Petition for Writ of Certiorari, or alternatively, affirm the Court of Appeals decision in *Arizona v. Gant*.

Respectfully submitted,



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